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Off. 1, Foreign Branch II
Attention: Mr. [REDACTED]
Office of the General Counsel

22 June 1949

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Censorship of Publications Entering the U. S. Information and
Material for [REDACTED]

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1. Dispatch No. [REDACTED], dated 15 April 1949, forwarded a request from [REDACTED] for information regarding the control and censorship of publications entering the U.S. This is presumably required as a guide in formulating legislation and policy for the country of origin; and, to that extent, we have examined the philosophy and views of various authorities on the general topic, together with current laws and regulations in force in the U. S. We will forward as much of the printed information as we could assemble without extending our search to an impractical and purely academic plane. Collection of this material has been delayed in order to obtain a copy of the latest postal regulations which will be available in a short time.

2. A clear comprehension of our laws and regulations can best be achieved by an examination of the provisions themselves but a few background words may help. Basically, control of publications in any form appears to be repugnant to the guarantees of the First and Fourteenth Amendments of the United States Constitution. Article I of our "Bill of Rights" - the First Amendment - is directed against Federal restraint, and states that - "Congress shall make no law... abridging the freedom of speech, or of the press." The Fourteenth Amendment contains a complementary protection against restrictive legislation by the individual States. But the Constitutional guarantees are not as conclusive or final as they appear. In the face of what is even today a considerable body of sincere and altruistic dissent, the fact is firm that both Federal and State control is in force and its justification has been sustained by our final judicial arbiters. The reasoning is not always consistent and hard, but certain broad planks in the framework persistently appear. Freedom of speech and the press are bedrock democratic rights, but the very preservation of the government granting such rights imposes a supervening limitation on their uninhibited enjoyment. As one writer (Am. Inst. Leaders - "Freedom of the Press") points out, there are certain policies governing control over free expression and its preservation does not warrant injury to another's tangible interests, peril to the national security when the danger is clear and present, or forfeiture of the right to preserve certain norms and standards of community morals and conduct. Thus, we control slander, libel and personal injury, sedition and criminal threat, as well as obscenity or indecency. But, even as to the content of writing, it is far from clear what opinion may prevail in any given case. (See the 5-4 decision of the Supreme Court on Freedom of Speech - Terminiello Case, May 1949.)

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3. Without probing the view of critics and scholars, the purpose and aim of our regulatory legislation is self-evident from the terms of the laws themselves. Restrictive Federal legislation controls publications through the instrumentalities - customs and the mails. Since the basic query is limited to publications, we will ignore myriad other articles ranging from germs to firearms. Under customs laws, persons are prohibited from knowingly bringing into the country "any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing" which advocates treason or insurrection against the U.S. or resistance to law, which contains threats of bodily harm, obscene thoughts, or methods of abortion, or which advertises or implements lottery. The offending publication is subject to seizure, and due process of law is preserved through provisions for subsequent determination of destruction or admittance. Court decisions are not abundant, but an able discussion of the problems inherent in defining "obscenity" under the Act is presented in the enclosed opinion of Judge Woolsey on the book "Ulysses".

4. While Customs plays a substantial role, the main means of controlling objectionable publications is through Government control of the mails. Cognizance over articles of domestic origin is obvious, but foreign mail comes under the same restraint through a provision requiring foreign vessels to deposit their mail on arrival in port. The laws themselves are several, varied and somewhat confused as the result of a recent change in the Code. However, it can be stated generally that certain material is considered non-ailable, subject to criminal penalty. The prohibitions are in line with those restrictions already mentioned for customs and they pertain to - sedition or treason, resistance to law, espionage, threats, lotteries, obscenity and indecency, libel fraud, and violation of U. S. copyrights by foreign publications. For ready reference, appropriate sections of the forthcoming publications will be marked.

5. It should be noted that the statutes themselves have been upheld as valid restrictions which are not incompatible with the freedom of speech and press guaranteed by the Constitution. Judicial interpretation varies, of course, with the court, the facts, and the standards of the day. The Woolsey opinion provides an excellent example of judicial criteria on "obscenity". In at least one case, the word "indecent" was construed to include matter inciting murder or assassination; and what is "fraudulent" may depend on a number of factors. Religious views are not objectionable simply because they clash with the sentiment of the majority of the people, and we have already indicated the "clear and present" nature of the danger required to bring seditious material within the pale. Other restrictions are related to interference with foreign commerce and falsification of

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of official documents. Generally, however, the controls fall within the broad groups given in paragraph 2 and their historical evolution would seem to be of only incidental interest.

6. The foregoing remarks have been directed to the basic laws and regulations effective in peace time. Under the stress of war, more stringent and specific censorship has been applied to press, radio, telegraph, and postal matters. Authorities consider the war power the broadest under our constitution. In implementing this power during World War II, Congress passed the first War Powers Act on December 18, 1941. Among other things, the Act provided for censorship of communications, and an Office of Censorship was established by Executive Order 8985. The Order stated, in part, that "there is hereby established the Office of Censorship, at the head of which shall be a Director of Censorship. The Director of Censorship shall cause to be censored, at his absolute discretion, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country, in accordance with such rules and regulations as the President shall from time to time prescribe. The establishment of rules and regulations in addition to the provisions of this Order should not be a condition to the exercise of the powers herein granted or the censorship by this order directed. The scope of this order shall include all foreign countries except such as may hereafter be expressly excluded by regulation." The Office was dissolved at the termination of the war, but during its existence it issued a number of directives which may be of value in your study. While they are now out of print, we are enclosing herewith copies of some in their entirety, and pertinent excerpts from others. "U. S. Censorship Regulations" revised as of 30 January 1943, and "Code of Wartime Practices for the American Press" dated 1 December 1943, are sufficiently comprehensive to warrant some study, and are forwarded as enclosures 3 and 4. Other instructions controlling operating overseas cable and radio circuits and affiliated landwire companies engaged in international traffic were issued as "Rules for Operating Companies", and those of particular interest are forwarded in enclosure 5. Besides the specific regulations, various codes of wartime practices were formulated as guides where strict and definitive rules could not be given to cover myriad situations which might be encountered. As the Office of Censorship indicated in the "Code of Wartime Practices for Non-Military Radio Services", dated 1 March 1943, the Office itself had two responsibilities: first, strict censorship, and second, coordination of voluntary effort. In this particular guide, that control of international radio traffic was complemented at home by the cooperative efforts of press and radio to keep dangerous information out of circulation. In applying controls to that group of radios operated by federal, state, municipal and private groups and individuals in behalf of activities related to: law enforcement, aviation, war emergencies, civilian defense,

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experimental activities, former traffic, weather services, flood control, forestry services, administrative work, etc., the Office indicated that it had no intention of curtailing any existing service which was considered absolutely essential. It did state the following rule of thumb: "Abandon all unnecessary use of radio facilities. Any use absolutely essential to service will invariably be of greater benefit to our war effort than it will be of aid to the enemy. The unnecessary use of facilities which discloses information of value to the enemy is a total loss to our war effort." In the section of the Code applicable to broadcasters, the Office warned the broadcasting industry of the dangers inherent in news broadcasts, routine programming, and commercial copy, and requested that certain news be kept off the air unless it had been made available for broadcast by appropriate authority or specifically cleared by the Office. In particular, it specified news in regard to: weather, armed forces, ships (convoy, etc.), damage by enemy land or sea attacks, action at sea, enemy air attack, planes, fortifications, sabotage, production, combat zone interviews, war prisoners, military intelligence, war news entering the country, and such items as casualties, strategy, the location of art objects, and general diplomatic information. The Office requested broadcasters to keep the microphones under the complete control of the station management or its representatives, not to accept telephonic or telegraphed requests for musical selections, to exert constant control over quiz programs, forums and interviews, and to be alert to any possible transmission of subversive or classified information through the use of a commercial continuity in programs or announcement broadcasts. Particular control of foreign language broadcasts was exerted through the employment of competent personnel, previous submission of scripts for inspection, and the use of qualified censors and monitors both before and during broadcasts. These particular directives issued by the Office of Censorship are the most specific examples of wartime controls. They were temporary in nature and expired with the end of the need. In a sense of course, they were merely supplementary to the basic continuing acts controlling Espionage and Security. Statutory restrictions on the collection and disclosure of national defense information remained in effect after the war, and were qualified during hostilities only by the seditious or disloyal nature of certain acts which assumed their quality because of the clear presence of the danger.

7. If the enclosed and forthcoming material is not clear, or additional comments are required, we will be glad to amplify our explanation or provide whatever further information you consider necessary. While only a little of the pertinent material is included in the "Custom House Guide", we thought perhaps the entire volume might be useful to [redacted] for other purposes.

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cc: Subject

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Legal Division
Control Records

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